SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

TCR SPORTS BROADCASTING HOLDING, LLP,

Petitioner,

-against-

WN PARTNER, LLC; NINE SPORTS HOLDING, LLC; WASHINGTON NATIONALS BASEBALL CLUB, LLC; THE OFFICE OF COMMISSIONER OF BASEBALL; and THE COMMISSIONER OF MAJOR LEAGUE BASEBALL,

Respondents,

-and-

THE BALTIMORE ORIOLES BASEBALL CLUB and BALTIMORE ORIOLES LIMITED PARTNERSHIP, in its capacity as managing partner of TCR SPORTS BROADCASTING HOLDING, LLP,

Nominal Respondents.

Index No. 652044/2014

NOTICE OF FILING

PLEASE TAKE NOTICE that attached hereto as Exhibit 1 is a copy of the final arbitration award issued by Major League Baseball's Revenue Sharing Definitions Committee, dated April 15, 2019, duly filed in the above-captioned action, on May 14, 2019.

DATED: New York, New York
May 14, 2019

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EXHIBIT 1

Revenue Sharing Definitions Committee

Hearing on Rights Fees Under March 28, 2005 Agreement amongst Major League Baseball, TCR Sports Broadcasting Holding L.L.P., Baseball Expos, L.P. D/B/A Washington Nationals Baseball Club, and the Baltimore Orioles Limited Partnership	:

FINAL DECISION OF THE REVENUE SHARING DEFINITIONS COMMITTEE

TABLE OF CONTENTS

Page

I. Background ... 2

A. Structure of the 3/28/05 Agreement ... 3

B. History of the Dispute ... 4

II. Discussion ... 8

A. Applicable Law ... 8

B. "Established Methodology" ... 10

C. Rights ... 12

D. Territory ... 14

E. Prejudgment Interest ... 15

F. What Is the RSDC's "Established Methodology?" ... 18

G. What Is the Fair Market Value of the Rights? ... 29

1. The Bottom-Up, Bortz Methodology ... 29

2. The Comparable Teams Approach ... 37

3. Conclusion on Fair Market Value ... 46

III. Conclusion ... 48

On November 15–16, 2018, the members of the Revenue Sharing Definitions Committee (the "**RSDC**" or "**Committee**") met in Atlanta, Georgia, to hear the dispute between the Baltimore Orioles (the "**Orioles**") and Mid-Atlantic Sports Network ("**MASN**") (collectively, "**Orioles/MASN**") and the Washington Nationals (the "**Nationals**") concerning the value of the license fee to be paid by MASN for the right to telecast games of the Nationals for the years 2012 through 2016. In accordance with the agreement between the Baltimore Orioles Partnership Limited and Major League Baseball ("**MLB**") dated March 28, 2005 (the "**3/28/05 Agreement**" or "**Agreement**"), OMX 1,[1] the Committee has determined those license fees "using the RSDC's established methodology for evaluating all other related party telecast agreements in the industry." *Id.* at § 2.J.3.

In reaching its conclusions, the Committee has benefited from the excellent oral and written advocacy of counsel for the parties throughout these proceedings. Based on all of the files, records and proceedings herein, including the testimony presented at the hearing, the parties' expert reports and witness statements, the voluminous exhibits offered into the record, and the parties' pre- and post-hearing briefs and other submissions, and drawing on the experience of the Committee's members, the RSDC has determined, and hereby finds, that the license fees to be paid by MASN to the Nationals for each of the years 2012–2016 are:

Year	**License Fee**
2012	$54,878,272.63
2013	$57,767,546.52
2014	$60,410,594.11
2015	$61,363,965.13
2016	$62,414,285.75
Average Annual Value	$59,366,932.83

[1] "**OMX**" refers to Orioles/MASN exhibits. "**NX**" refers to Nationals exhibits.

The Committee's determinations as to fact and law are set forth below. To the extent that the Committee's recitation of facts differs from any party's position, it is the result of determination as to credibility, relevance, burden of proof, and weight of evidence. Any summary of any party's position is meant to be illustrative rather than exhaustive.

I. Background

The 3/28/05 Agreement, among other things, sets forth the license fees that MASN, a regional sports network (or "**RSN**") was obligated to pay, and did pay, the Nationals and the Orioles for the years 2005 through 2011. Agreement (OMX 1) § 2.G. The Agreement further provides that, for the years following 2011, the parties must negotiate the license fees for five-year blocks, with the first starting on 2012. *Id.* § 2.I. The Agreement describes a dispute-resolution mechanism for determining license fees if the parties cannot agree. *Id.* § 2.J.

Much of the current dispute between the parties concerns the method that the Committee should use to value the rights at issue. The Orioles/MASN favor a bottom-up analysis that calculates license fees based on the income statement of MASN, while assuming a specific operating margin and specific percentages of revenue and expenses attributable to baseball. *See* Post-Hearing Submission of Mid-Atlantic Sports Network and the Baltimore Orioles ("**Orioles/MASN Final Brief**") at 2 (Dec. 14, 2018). The Nationals favor an analysis placing considerable weight on comparable teams and deals. Post Hearing Submission of the Washington Nationals Baseball Club ("**Nationals Final Brief**") 1–2, ¶3 (Dec. 14, 2018). This dispute is central to what "established methodology" means in § 2.J.3—each side contends that its preferred methodology is the "established methodology." Orioles/MASN Final Brief at 2; Nationals Final Brief at 1–2, ¶3.

A. Structure of the 3/28/05 Agreement

Under the Agreement, MASN has the sole and exclusive right to broadcast all Nationals' and Orioles' games not retained or reserved by MLB's national rights agreements. Agreement (OMX 1) §§ 2.A, 2.D. License fees for the years 2005–2011 were set forth in the Agreement. *Id.* § 2.G. The Nationals, the Orioles, and MASN are to negotiate the license fees that MASN will pay the two teams starting on 2012 "using the most recent information available which is capable of verification to establish the fair market value of the telecast rights licensed to the RSN." *Id.* § 2.I. If the parties cannot agree upon the license fees that MASN should pay, § 2.J explains what must be done.

The RSDC typically reviews related-party transactions to see if the revenues that teams declare in the form of license fees are at market value or too low. *See, e.g.*, 16th Report[2] (OMX 4) at 5 ("Under the Revenue Sharing Plan, the Administrator is required to review all related party transactions ('RPT') to determine whether the Clubs are reporting revenues from such transactions 'as if' [the transactions] were entered into on an arm's length basis'" (quoting August 29, 1997 Revenue Sharing Definitions Subcommittee Report at 7) (alterations in original)); 39th Report (NX 47) at 2 ("[T]he Committee reviewed whether the rights fee received by the Indians . . . was consistent with fair market value.").[3]

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2 References to "Reports" are to Reports of the RSDC.

3 Each of the Reports on which the parties rely echoes this. 18th Report (OMX 3) at 1 ("As such, the Revenue Sharing Definitions Committee ('RSDC') is charged with the responsibility of making a recommendation to the Administrator of the Revenue Sharing Plan on the question of whether the revenue generated by the Red Sox under the NESN agreement is the same as would have been produced by an arm's length transaction."); 34th Report (NX 3) at 1 ("The Committee has adjusted a Club's Net Local Revenue if it determined that the Club received less than fair market value for its local media rights during any Revenue Sharing Year.").

This makes sense because the Orioles control the majority of MASN's profit interest. *See* 3/28/05 Agreement (OMX 1) § 2.N. The Orioles also control MASN "as managing partner of the RSN" and "have the full authority to manage operate all of the business affairs of the RSN." *Id.* § 2.O. Any team with some ownership and control of an RSN may find itself with an incentive to takes its portion of the revenues of the RSN as profit from the enterprise rather than as license fees because the former are not subject to revenue sharing. *See* 18th Report (OMX 3) at 2 ("In contrast, the RSDC's concern is that NESN might underpay the Red Sox and thus increase the value of NESN to the benefit of both the majority and minority owners of the broadcasting entity and the detriment of the 29 other Major League Clubs."); *see also* Expert Analyses and Opinions of Chris Bevilacqua ("**Bevilacqua Report**") at 9, ¶25 (Aug. 10, 2018); Joint Pre-Hearing Submission of Mid-Atlantic Sports Network and the Baltimore Orioles ("**Orioles/MASN Opening Brief**") at 17–18, ¶30 (Aug. 10, 2018). Here, the Orioles are incentivized to prefer a higher profit dividend from MASN and a lower license fee, and the Nationals to prefer the opposite. While rights fees to the two teams are to be equal, *see* 3/28/05 Agreement (OMX 1) § 2.J.3, the profits of MASN are split such that a super-majority goes to the Orioles. *See id.* § 2.N. The RSDC is tasked with determining that MASN pay market-level license fees, rather than sub-market fees with correspondingly higher MASN profits.

B. History of the Dispute

In 2004, MLB decided to move the Montreal Expos (the "**Expos**") to Washington, D.C. *See TCR Sports Broad. Holding, LLP v. WN Partner, LLC*, 153 A.D.3d 140, 144, 59 N.Y.S.3d 672, 674 (1st Dep't 2017) (plurality opinion). When MLB voted to move the Expos to Washington, D.C., the Orioles dissented. "In an effort to resolve several issues associated with the Expos' relocation," the Orioles and MLB settled and entered into the 3/28/05 Agreement.

TCR Sports Broad., 153 A.D.3d at 144, 59 N.Y.S.3d at 674 (plurality opinion). The Nationals were later purchased by the Lerner family, in 2006. *See* Orioles/MASN Final Brief at 4; Nationals Final Brief at 4, ¶9. Thus, MLB owned the Nationals at the time the 3/28/05 Agreement was negotiated and signed.

The Agreement was negotiated in 2005, with multiple drafts exchanged. *See, e.g.*, 3/23/05 Draft of Agreement (NX 89); 3/26/05 Draft Agreement (OMX 46).[4] The Agreement was signed by Peter Angelos on behalf of the Orioles/MASN and Commissioner Selig for MLB. 3/28/05 Agreement (OMX 1) at 18–19. After the Agreement was signed, there was apparently a carriage dispute between MASN and Comcast, during which Comcast actually took MASN off the air (at the time, MASN was broadcasting only Nationals' games). This led to an FCC complaint by MASN. The FCC sent the matter to arbitration, and it settled. *See* Richard Sandomir, *Beltway Cable Dispute: Fans Paying the Price*, N.Y. TIMES (June 28, 2005), https://www.nytimes.com/2005/06/28/sports/baseball/beltway-cable-dispute-fans-paying-the-price.html; Arshad Mohammed, *FCC Finds Possible Bias Against MASN by Comcast*, WASH. POST (Aug. 1, 2006), https://www.washingtonpost.com/archive/business/2006/08/01/fcc-finds-possible-bias-against-masn-by-comcast/1cbb3ac7-6815-480b-bd3d-5868265d7729/?utm_term=.a63f0dd52ace; *see also* Letter of Stephen B. Burke to Allan H. Selig (NX 17) (Apr. 6, 2006).

On April 3, 2012 the RSDC (then composed of different members) convened a hearing to determine the fair market value of the rights at issue here (the "**2012 RSDC Hearing**"). *See* *TCR Sports Broad.*, 153 A.D.3d at 147–48, 59 N.Y.S.3d at 677 (plurality opinion). This followed unsuccessful negotiations in which the Orioles/MASN offered the Nationals an average annual license fee of $34 million, while the Nationals sought more than $110 million annually.

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[4] The relevant facts and contentions regarding these negotiations are discussed in § II.F.

See id. at 145, 59 N.Y.S.3d at 675. At the 2012 RSDC Hearing, the Orioles/MASN proposed an average annual license fee of $39.5 million, while the Nationals proposed $118 million. *See id.* at 148, 59 N.Y.S.3d at 677. In the summer of 2012, the parties tried to settle the dispute, after being told roughly where the previous RSDC was likely to come out. *See id*. In 2012, MLB made a loan to the Nationals in the amount of $24,574,138. *See* Letter of Steven Neuwirth to RSDC (Mar. 12, 2018) at Ex. A.

On June 30, 2014, the previous RSDC issued its final decision (the "**2014 RSDC Decision**"). *See* 2014 RSDC Decision (NX 74) at 20. The previous iteration of this Committee determined that the fair market value of each team's telecast rights was:

	2012	**2013**	**2014**	**2015**	**2016**	**Average**
License Fee (millions)	$53.2	$56.3	$59.3	$62.6	$66.7	$59.6

Id. at 19. In September 2014, MASN filed a petition in New York Supreme Court to vacate the previous Committee's award. *TCR Sports Broad.*, 153 A.D.3d at 149, 59 N.Y.S.3d at 678. The plurality opinion of the New York Supreme Court Appellate Division, First Department, summarized the allegations as follows:

> In support of its petition, MASN alleged that MLB had a financial stake in the outcome of the arbitration due to the $25 million advance it made to the Nationals; that MLB, the Nationals and the arbitrators all used the same law firm without full disclosure as to possible conflicts; that MLB controlled the arbitration process; and that the arbitrators failed to apply the Bortz methodology, as required by the agreement. MASN further alleged that the RSDC was impossibly tainted by a conflict of interest because an increase in the rights fees, which are taxed by MLB, meant that more money would go into MLB's revenue sharing pool, and the Rays and Pirates, whose representatives were on the RSDC, were teams that benefited from revenue-sharing.

Id.

The Supreme Court (the trial court) vacated the 2014 RSDC Decision for the sole reason that, in connection with the 2012 RSDC Hearing, the Nationals were represented by the same law firm (Proskauer Rose LLP) that was also counsel to MLB and to some of the teams with

representatives serving on the RSDC. *Id.* at 149–50, 59 N.Y.S.3d at 678. The Appellate Division affirmed the vacatur. The plurality agreed that the conflict requiring rehearing arose from the fact that Proskauer Rose was not only counsel for Nationals in connection with the 2012 RSDC Hearing, but also other attorneys in the firm represented both the MLB and members of the RSDC. *See id.* at 151–52, 59 N.Y.S.3d at 679–80. The plurality also held that a second arbitration under a new Committee was the correct resolution because the 3/28/05 Agreement showed a conscious intent of the parties "for arbitration before the RSDC, an industry-insider committee," whose "members are selected by MLB in its sole discretion" and that it was appropriate that "MLB staff would provide administrative, organizational and legal support, including analyzing financial information and preparing draft decisions in accordance with the instructions of the RSDC members who would make the final determinations." *See id.* at 156, 59 N.Y.S.3d at 682–83.

The concurring opinion pointed out that the parties' choice of the RSDC as the forum for arbitration overrode concerns that there could be interference in the RSDC's decision by MLB, so the arbitration could not be ordered moved to another forum. *Id.* at 161, 59 N.Y.S.3d at 686 (concurrence). The Appellate Division opinions were issued on July 13, 2017. On January 18, 2018, the Appellate Division denied leave to appeal to the New York Court of Appeals. *See* Notice of Entry, *TCR Sports Broad. Holding, LLP v. Wash. Nationals Baseball Club, LLC*, No. 652044/2014, NYSCEF Doc. No. 780 (Sup. Ct. N.Y. Cty. Jan. 19, 2018). Preparations for this hearing soon began. *See* Letter of Joseph C. Shenker to Counsel for All Parties (Feb. 28, 2018).

Sullivan & Cromwell LLP initially represented the present Committee. On May 1, 2018, Sullivan & Cromwell stepped down. *See* Letter of Joseph C. Shenker to Counsel for All Parties (May 1, 2018). The Committee retained Joseph Hage Aaronson LLC. Letter of Gregory P.

Joseph to Counsel for All Parties (May 7, 2018). The Committee originally scheduled a hearing for August 2018 but, at the request of the Orioles/MASN, the hearing was postponed to November 15–16, 2018. *See* Procedural Orders Nos. 1 and 4.

Throughout 2012–2016 MASN paid to the Nationals the license fees that the Orioles/MASN had proposed in the 2012 RSDC Hearing:

	2012	**2013**	**2014**	**2015**	**2016**	**Average**
License Fee (millions)	$34.0	$36.6	$39.3	$42.0	$45.7	$39.5

Bortz Media & Sports Group, Report ("**2012 Wyche/Bortz Report**") at 1 (Mar. 1, 2012); Orioles/MASN Opening Brief at 6, ¶9 n.17.

MASN also made profit distributions to the Nationals—and impliedly to the Orioles[5]—in the following amounts:

	2012	**2013**	**2014**	**2015**	**2016**	**Average**
Nationals' Profit Distributions (millions)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Orioles' Profit Distributions (millions)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

See NX 42; NX 43.

II. Discussion

A. Applicable Law

The 3/28/05 Agreement's § 2.J.3 directs the RSDC to determine "the fair market value" of the rights licensed to MASN "using the RSDC's established methodology for evaluating all other related party telecast agreements in the industry."

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[5] The equity distributions set forth in the accompanying table are drawn from NX 42 and NX 43. While neither party submitted MASN's full financial statements itemizing the parties' equity distributions, NX 42 and NX 43 set forth the Nationals' equity distributions and calculates the Orioles' implied distributions based on the Parties' relative profit ownership under the Agreement (OMX 1 at § 2.N). The Orioles/MASN did not dispute the Nationals' calculations or offer competing ones.

Maryland law governs. Agreement (OMX 1) § 11.A. Under the law of Maryland, the Committee will construe the provisions of this Agreement that are unambiguous as a matter of law, while those that are ambiguous the Committee will construe with reference to extrinsic evidence. *Calomiris v. Woods*, 727 A.2d 358, 363 (Md. 1999); *Anne Arundel Cty. v. Crofton Corp.*, 410 A.2d 228, 232 (Md. 1980). A provision is ambiguous "if, when read by a reasonably prudent person, it is susceptible of more than one meaning." *Calomiris*, 727 A.2d at 363. That determination "includes a consideration of 'the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution.'" *Id.* (quoting *Pac. Indem. Co. v. Interstate Fire & Cas. Co.*, 488 A.2d 486, 488 (Md. 1985)).

The Agreement contains an integration clause providing that the Agreement is "the entire agreement between the parties with respect to the subject matters herein and supersede all other oral and written understandings or agreements relating to the subject matters contained herein." 3/28/05 Agreement (OMX 1) § 11.B. Under Maryland law, an integration clause "can be seen as wiping clear any prior oral or implied agreements that were not included in the contract." *Hovnanian Land Inv. Grp., LLC v. Annapolis Towne Centre at Parole, LLC*, 25 A.3d 967, 986 (Md. 2011).

The Agreement disclaims the *contra proferentem* rule, the principle that "ambiguities are resolved against the draftsman of the instrument." *John L. Mattingly Constr. Co. v. Hartford Underwriters Ins. Co.*, 999 A.2d 1066, 1078 (Md. 2010). Section 11.F. provides that "[t]he parties hereby acknowledge that no provision of this Agreement shall be construed against a party solely because that party (or that party's counsel) drafted such provision." 3/28/05 Agreement (OMX 1) § 11.F.

Under Maryland law, extrinsic evidence includes:

- Statements made by the parties during negotiations, *Canaras v. Lift Truck Servs., Inc.*, 322 A.2d 866, 874 (Md. 1974);

- The parties' construction of the contract, *see First Union Nat'l Bank v. Steele Software Sys. Corp.*, 838 A.2d 404, 457 (Md. Ct. Spec. App. 2003) ("There was significant extrinsic evidence offered by both parties. This included evidence as to the parties' construction of the contract after its execution."); *Canaras*, 322 A.2d at 874 ("In such a case the court may consider evidence of extrinsic factors, *i.e.*, . . . the parties' own construction of the contract . . . ."); and

- Whether one interpretation of an agreement appears more fair than another, *see Calomiris*, 727 A.2d at 368 ("A trial court may properly consider the apparent fairness of a given result when contract language is susceptible of two different interpretations, one of which leads to a reasonable result and the other to an unreasonable result. 'Where language of a contract is open to an interpretation which is reasonable and in accordance with the general purpose of the parties, the hardship of a different interpretation is strong ground for belief that such a meaning was not intended.'").

Before reaching the parties' contentions regarding extrinsic evidence, the Committee will review the key contractual terms and determine whether they are ambiguous.

B. "Established Methodology"

Section 2.J.3 requires that the Committee determine the "fair market value of the Rights . . . using the RSDC's established methodology for evaluating all other related party telecast agreements in the industry." 3/28/05 Agreement (OMX 1) § 2.J.3. Both parties contend that this provision is unambiguous, but they propose starkly different interpretations. The Orioles/MASN maintain that the phrase "established methodology" refers to the methodology that was established at the time that the 3/28/05 Agreement was signed because *established* is in "the past-tense," and so must refer to a time already in the past when the Agreement was signed. Orioles/MASN Final Brief at 14. The Orioles/MASN contend that if the term *established* would allow any other methodology, the term would be meaningless, and it would be equivalent to not having it there at all. *Id.* at 15–16. The Orioles/MASN also note that the Agreement could have but did not use terms like "then-current" or "then-applicable" to described the "established methodology," and so such a concept should not be read into the Agreement. *See id.* at 16 &

n.56 (citing 3/28/05 Agreement (OMX 1) § 1.C); *see also* 3/28/05 Agreement § 1.I. The Orioles/MASN also contend that, in the context of the 3/28/05 Agreement, the parties opted for certainty in dealing with the important issue of the license fees, necessitating that the formula for ascertaining them be fixed at the signing, particularly because MASN's telecast license fees were "the only form of compensation" that the Orioles "received under the Agreement." *See* Orioles/MASN Final Brief at 14–15. The Orioles/MASN urge that the methodology already established at time the 3/28/05 Agreement was signed was the Bortz Methodology, encapsulated in the 16th and 18th Reports. *See id.* at 17–18. The Bortz Methodology, discussed in more detail in § II.G.1, calculates a license fee based on either projected or actual revenues and expenses by assuming a certain operating margin, and allocates what is left of revenues after deducting expenses and that operating margin for the license fee. *See id.* at 21–23.[6]

The Nationals maintain that "established methodology" means that which is *established* at the time of the hearing. Nationals Final Brief at 13–14, ¶26. The primary reason for this, the Nationals contend, is that § 2.J.3 refers to the "established methodology for evaluating all other related-party telecast agreements in the industry." *Id.* at 13–16, ¶¶26–27, 29. The Nationals point out that the 3/28/05 Agreement could have, but did not, reference either Bortz or any established formula for determining the fair market value of the license fees. *Id.* at 14–15, ¶28. Therefore, the Nationals urge the Committee to look to the 34th Report (NX 3), which has been in effect since 2012, or a 2011 Letter from Mr. Manfred to counsel for the parties (NX 55) that

[6] As discussed further in § II.G.1, the margin in question is an *operating* margin, which looks not at *all* revenues and expenses, but only those that are attributable to baseball—*i.e.*, operating revenues and expenses. *See id.* at 21–22; Washington Nationals & Baltimore Orioles TV Rights Analysis for the Years 2012 Through 2016 ("**Wyche/Bortz Report**") at 7–8 (Aug. 10, 2018).

was in effect at the time of the initial RSDC hearing in this matter and which amounts to the same thing. Nationals Final Brief at 13–14, ¶26.

The Committee concludes that both interpretations of the phrase "established methodology" are reasonable and that the phrase is ambiguous. Therefore, the Committee will look to the parties' proffered extrinsic evidence with respect to this phrase. *See* § II.F, *infra*.

C. Rights

Although the phrase "established methodology" is ambiguous, other related provisions of the Agreement are unambiguous, so they must be construed without resort to extrinsic evidence. *See Calomiris*, 727 A.2d at 366 ("One may not argue ambiguity in one contractual term or clause in order to gain the admittance of extrinsic evidence to contradict other terms or clauses in the contract that are unambiguous. The extrinsic evidence admitted must help interpret the ambiguous language and not be used to contradict other, unambiguous language in the contract.").

The term "Rights" is defined in § 2.J.1, in the following sentence:

> In the event that the Nationals and the RSN, or the Orioles and the RSN, are unable to agree on the fair market value of their respective rights within thirty (30) days or a mutually-agreed upon longer period of time (the "Negotiation Period"), the relevant parties shall follow the procedures set forth in this Subsection to establish the fair market value of the rights licensed to the RSN (the "**Rights**").

3/28/05 Agreement (OMX 1) § 2.J.1 (emphasis added).

The Nationals' argue that § 2.J.1 defines the term "Rights" with respect to a particular team's disagreement with MASN—that of the Nationals or that of the Orioles. *See* Nationals Final Brief at 24, ¶48. The Nationals' textual argument is that "Rights" refers to the "respective rights" of either the Nationals or of the Orioles. *Id.* Accordingly, the Rights defined in § 2.J.1 refer to the rights of the team disputing its fees with MASN, that "Rights" thus refers only to one

team's rights, and that in the present dispute, that the "Rights" are the Nationals' rights. *Id.*; *see also id.* at 7–8, ¶14.

The Orioles/MASN argue, *first*, that "Rights" refers to "the rights licensed to the RSN." *See* Orioles/MASN Final Brief at 12. *Second*, the Orioles/MASN contend that "the Nationals' interpretation applies only when one club is challenging MASN's determination." *See id.* at 13.

The Committee concludes that the Orioles/MASN have the correct textual analysis. The term "Rights" refers to the last set of rights mentioned, which are "the rights licensed to the RSN [*i.e.*, MASN]."[7] The Committee acknowledges that one could construe the term "rights licensed to the RSN" to refer to a disputing party's "respective rights." *See* 3/28/05 Agreement (OMX 1) § 2.J.1. The problem with that interpretation of "Rights" is that once the RSDC decides on the fair market value of the license fees of one of the two clubs, its determination is "final and binding" on both. *See* § 2.J.3. Under the Nationals' interpretation, therefore, RSDC could potentially issue a decision binding on both parties based at least in part on factors unique to the team which disputed its license fees with MASN first. This is not a reasonable interpretation.

The Committee notes the Orioles/MASN's concern that following the Nationals' approach "would result in the Orioles receiving rights fees based on the value of the Nationals' hypothetical rights." *See* Orioles/MASN Final Brief at 12. As a practical matter, that is not a

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[7] This is not an application of the last antecedent rule, which holds roughly that "a qualifying clause ordinarily is confined to the immediately preceding word or phrase." *McCree v. State*, 105 A.3d 456, 466 (Md. 2014). The rule appears to be in disuse in Maryland, both for statutory construction and for contractual interpretation. *See id.* 466 ("The last antecedent rule does not apply '[w]here the sense of the entire [statute] requires that a qualifying [clause] apply to several preceding' words." (quoting *Emp't Sec. Admin. v. Weimer*, 400 A.2d 1101, 1105 (Md. 1979)); *Azam v. Carroll Independent Fuel, LLC*, 199 A.3d 701, 714 (Md. Ct. Spec. App. 2019) ("The observation that when a qualifier follows a series, it may well refer to the last item in the series unless the clear meaning of the larger passage indicates otherwise is harmless enough, as long as we are careful not to capitalize the observation or to call it a rule.").

real risk on the present record. As discussed in § II.G, neither party has proposed an analysis that looks at factors unique to one of them. The Nationals appear to be concerned that the Committee might value "a single rights fee for the unified territory that would then be divided between the Orioles and the Nationals." *See* Nationals Final Brief at 7–8, ¶14. This perhaps would be an issue if the Committee were, for example, to value the license fees at issue as though the Nationals and the Orioles were one team, but this Committee is not inclined to do so. *See* § II.F–G, *infra*.

The Committee concludes that the "Rights" it is to value are the combined rights to the telecast of both teams' games.

D. Territory

The parties disagree on how to value the territory at issue. Section 2.K of the Agreement (OMX 1) states:

> For all purposes of determining the amount of the appropriate rights fees payable to the Orioles and the Nationals, the entire Television Territory shall be analyzed and examined as if the Television Territory were a unified territory in all respects, that is, the same geographic territory, the same DMAs, the same number of households and treated as a single television market.

The Nationals argue that § 2.K is clear and that any valuation should treat the parties as though they were in the same territory "in all respects." *See* Nationals Final Brief at 22–23, ¶45 (quoting 3/28/05 Agreement (OMX 1) § 2.K). The Orioles/MASN's argument boils down to the specific kinds of demographic statistics the Committee should review when making its analysis—namely, that under no circumstances should the Committee evaluate the Nationals *as though* they had the whole DMA of both Baltimore *and* Washington, D.C. *See* Orioles/MASN Final Brief at 31–32.

As demonstrated in § II.G.2, the question of territory is most pertinent for the purposes of comparing the license fees of the Orioles and Nationals to those of comparable teams. However,

as a matter of law, the Committee concludes that § 2.K of the Agreement requires that each team is to be assumed to have the same DMAs.

E. Prejudgment Interest

The Nationals have requested prejudgment interest. *See* Nationals Reply Brief at 56, ¶103; Nationals Final Brief at 34–35, ¶70. Maryland allows 6% simple interest. *See* Md. Const. art. 3, § 57 ("The Legal Rate of Interest shall be Six per cent. per annum"); *Mezu v. Progress Bank of Nigeria, PLC*, No. 12 Civ. 2865 (JBK), 2013 WL 6531626, at *1 (D. Md. Dec. 11, 2013); *see also Fed. Savings & Loan Ins. Corp. v. Quality Inns, Inc.*, 876 F.2d 353, 359 (4th Cir. 1989).[8]

The Orioles/MASN oppose prejudgment interest on two principal grounds. *First*, they point out that prejudgment interest is discretionary in Maryland, except for a small number of cases in which "the obligation to pay and the amount due had become certain, definite, and liquidated by a specific date prior to judgment." Orioles/MASN Final Brief at 34 (quoting *Ver Brycke v. Ver Brycke*, 843 A.2d 758, 777 (Md. 2004)). The Nationals do not expressly claim that prejudgment interest here must be awarded, as a matter of right. *See* Nationals Final Brief at 34–35, ¶70 & n.211. The parties are both correct—prejudgment interest is discretionary as a general matter, *see Ver Brycke*, 843 A.2d at 777, and the exception that would render it mandatory does not apply. That is because where "fair value" is "a question of fact involving complex principles of valuation," the "obligation to pay" is not considered "certain." *E. Park Ltd. P'ship v. Larkin*, 893 A.2d 1219, 1234–35 (Md. Ct. Spec. App. 2006); *cf. Balt. Cty. v. Balt. Cty. Fraternal Order*

[8] The Maryland constitution sets the maximum interest rate at 6% unless changed by legislature. Md. Const. art. 3, § 57. Although there is a statute setting interest at 10%, MD. CODE ANN., CTS. & JUD. PROC. § 11-107 (2013), that provision only applies to judgments of a court—*i.e.*, interest after entry of judgment. *See Fed. Savings & Loan*, 876 F.2d at 359.

of Police, 104 A.3d 986, 1026 (Md. Ct. Spec. App. 2014) (holding amount of damages "specifically ascertainable" for purposes of requiring prejudgment interest because the calculation "depended on four fixed, known numbers" that were not in dispute), *aff'd on other grounds*, 144 A.3d 1213, 1222 n.11 (Md. 2016) . Here, the calculation is sufficiently complex that interest should not be awarded as a matter of right.

Second, the Orioles/MASN maintain that if prejudgment interest were awarded, it must be decreased because any gap between what MASN paid in license fees to the Nationals, and whatever this Committee might award, should be offset by the $24.6 million loan that MLB made to the Nationals (presumably less interest paid) as well as the profit distributions that the Nationals have received (which would have been lower if license fees were higher), about [redacted] *See* Orioles/MASN Final Brief at 34; NX 43.

Third, the Orioles/MASN contend that any award of prejudgment interest is inappropriate because it was the Nationals' decision to hire a conflicted law firm and the Nationals' refusal to agree to a reasonable settlement that led to the lapse in time between the original hearing in 2012 and this current year 2019. *See* Orioles/MASN Final Brief at 34 & n.147.

Neither party, however, has addressed the threshold question of whether the Committee has the power to award prejudgment interest on the fair market value of the license fees. The power of the Committee is defined entirely in § 2.J.3, which states only that:

> In the event that the Nationals and/or the Orioles and RSN are unable to timely establish the fair market value of the Rights by negotiation and/or mediation as set forth above, then the fair market value of the Rights shall be determined by the Revenue Sharing Definitions Committee ("RSDC") using the RSDC's established methodology for evaluating all other related party telecast agreements in the industry.

3/28/05 Agreement (OMX 1) 2.J.3. As an arbitration panel, this Committee has the power and obligation to interpret the 3/28/05 Agreement to determine the scope of the issues before it. *See*

Balt. Cty. Fraternal Order of Police v. Balt. Cty., 57 A.3d 425, 435–36 (Md. 2012). This Committee holds that its authority runs no further than determining the fair market value of the rights at issue. *See Duane Reade, Inc. v. St. Paul Fire & Marine Ins. Co.*, 600 F.3d 190, 203 (2d Cir. 2010) (New York law) (even though the parties may have intended for an appraisal to include pre-award interest, it did not follow that "an appraisal which is limited to factual disputes over the amount of loss for which an insurer is liable" could also make a legal determination over whether prejudgment interest would be appropriate for that sum of money). Just as the Committee lacks the authority to enter a judgment, it cannot award prejudgment interest.[9]

The Committee also holds that, even if it had the power to award prejudgment interest, it would exercise its discretion to not do so. *First*, the Nationals have not provided any calculations to suggest even how much prejudgment interest they contend should be awarded—only some suggestions as to how to go about calculating it. *See* Nationals Final Brief at 34–35, ¶¶70–71 & n.212. *Second*, for purposes of calculating prejudgment interest, the Committee agrees with the Orioles/MASN that it would have to offset any net increase in Nationals' license fees determined by the Committee by both the $24.6 million MLB loan (less interest payments made) and profit distributions the Nationals have received. Consequently, it appears that the Nationals' out-of-pocket cash flow diminution in the earlier part of the 2012–2016 period has been considerably, though not entirely, offset. *Third*, the Committee has not been directed to any detailed information about when MASN profit distributions were actually received by the Nationals, making a precise calculation impossible. *Fourth*, the Orioles/MASN are not responsible for the delay in the Nationals' receipt of higher license fees. The delay was a

9 The Nationals similarly seek an award of costs and litigation expenses. *See* Nationals Final Brief at 34–35, ¶70. The Agreement does not confer on the Committee the power to award costs and expenses.

function of the judicial process. Accordingly, the Committee would exercise its discretion to decline to award prejudgment interest, even if it were within its power to award it.

F. What Is the RSDC's "Established Methodology?"

In § II.B, the Committee determined that the phrase "established methodology" is ambiguous because both parties propose contrary but reasonable interpretations of that phrase. *See Calomiris*, 727 A.2d at 363 ("In determining whether a writing is ambiguous, Maryland has long adhered to the law of the objective interpretation of contracts. Under the objective view, a written contract is ambiguous if, when read by a reasonably prudent person, it is susceptible of more than one meaning.") (citations omitted). Specifically, the phrase "established methodology" is ambiguous with respect to whether the RSDC should use a methodology that was established as of the time of that the Agreement was signed or a methodology that is established as of the time a particular RSDC evaluates the rights fees for a given set of years.

The Orioles/MASN's argument for their textual position is described in § II.B. They advance the following pieces of extrinsic evidence, among others:

- The 16th and 18th Reports were presented to the Orioles as examples of what the RSDC does, and they exclusively referred to the Bortz Methodology. Both the 16th and 18th Report reject the use of a comparable teams or transactions approach. *See id.* at 17–18; 16th Report (OMX 4) at 7–8; 18th Report (OMX 3) at 5. *See* Orioles/MASN Final Brief at 17–18; Tr. 567:17–568:19 (Rifkin); Witness Statement of Alan M. Rifkin, Esq. ("**Rifkin Witness Statement**") at 10–11, ¶¶44–47.[10]

[10] The Nationals objected to Mr. Rifkin's statements about what MLB's representatives said to the Orioles' representatives in the 2005 negotiations. Tr. 566:15–22. However, Mr. Rifkin's description of what MLB's representative Robert DuPuy gave to Mr. Rifkin as examples of the "established methodology" are not descriptions of Mr. DuPuy's statements, and to the extent that those actions are to be construed as statements, they are not offered for the truth of Mr. DuPuy's assertions—*i.e.*, that the established methodology was or was not encapsulated in the 16th and 18th Reports—but only for the purpose of explaining the Orioles' purported reliance on those statements. *See United States v. Lancman*, No. 4:95 Civ. 880 (JRT) (RLE), 1998 WL 315346, at *2 n.3 (D. Minn. Jan. 20, 1998) (report and recommendation) (out-of-court statements admissible "to establish grounds for Defendant's reliance upon them"), *adopted*, Order, ECF No. 46 (D. Minn.

- A draft of the Agreement struck references to comparable teams or transactions. *See* Orioles/MASN Final Brief at 17; 3/25/05 11:45 p.m. Draft (OMX 44) at 8; Tr. 563:17–566:11 (Rifkin).

- Allen & Co., working for MLB, projected EBITDA margins of around 33% for MASN through 2016, and MLB provided this projection to the Orioles. *See* Orioles/MASN Final Brief at 23 & n.96 (citing Allen & Co. Projections, OMX 19); Tr. 511:8–516:7 (Haley); Rifkin Witness Statement at 6–7, ¶¶27–31.[11]

- An email from Mr. Manfred in 2012, during the 2012 RSDC Hearing, states that a "go[ing] forward" approach to valuation that abandoned the Bortz Methodology does not "really [a]ffect[] a case applying an 'established methodology.'" *See* OMX 30; Orioles/MASN Final Brief at 19.

- The Agreement is meant to compensate the Orioles for the Nationals' move to Washington, D.C., and future license fees from MASN are "the *only* form of compensation they [the Orioles] received under the Agreement." Orioles/MASN Final Brief at 1–2, 6–7, 15; Tr. 511:24–512:22 (Haley).

- The Orioles/MASN contend that the Orioles suffered harmed of "at least $50 million *per year*" when the Nationals relocated to Washington, D.C. *See* Orioles/MASN Final Brief at 6 & n.26. They offer two pieces of evidence. *See id.*

  - The first is a document dated December 21, 2004 from Deloitte suggested that the Orioles stood to lose $21.25 million to $29.8 million in revenue (the "**Deloitte Report**"). *See* Deloitte Report (Rifkin Witness Statement Ex. 2) at 16; *see also* Rifkin Witness Statement ¶17. MASN Chief Financial Officer Michael Haley testified that a Deloitte study estimated harm in "attendance driven revenues" of "[$]21 million and $30 million," and that the harm to "the Orioles' television rights . . . estimated to be $20 million," which he summed up as: "you could say [$]50 million total." Tr. 509:17–510:10 (Haley). It is not clear where Mr. Haley derived the $20 million diminution in the value of television rights. The Deloitte report in the record does not contain it. *See* Rifkin Witness Statement Ex. 2. The Committee notes, however, that the Deloitte Report in the record is labeled "Preliminary Draft — For Discussion Purposes Only."

Mar. 31, 1998); *Ferguson v. Lurie*, No. 89 Civ. 2283, 1991 WL 256869, at *3 (N.D. Ill. Nov. 21, 1991) ("[T]hese papers do not constitute hearsay because they are offered to show defendants' reliance . . . ."); *see also United States v. Yefsky*, 994 F.2d 885, 897 (1st Cir. 1993) (agreeing with parties that it was error to exclude statement: "the evidence was not hearsay because he sought to introduce it only to demonstrate his wife's reliance on the statement and his own lack of intent").

[11] The Nationals' objection to these statement as hearsay, Tr. 511:13–22, is also overruled because these statements are offered for the purpose of explaining the Oriole's purported reliance, and not for the truth of the matter asserted—*i.e.*, what MASN's margin was for a given year. *See supra* n.10.

  - The second piece of evidence is an August 20, 2004 letter from Mr. Wyche to Mr. Angelos, estimating that if the Nationals moved to Dulles, Virginia, the Orioles would suffer about $43 million in annual lost revenue, 2007–2015 ("**8/20/04 Wyche Letter**"). *See* 8/20/04 Wyche Letter (OMX 39) at 1–2. The same letter also estimated that if the Nationals moved to Norfolk, Virginia, the Orioles would suffer $12.5 million in annual lost revenue, 2007–2015. *See id.* The 8/20/2014 letter states that it is a "Draft"; that it is "Confidential Attorney Work Product." *See id.* Mr. Wyche did not include these figures, or any other estimate of annual harm, in either of his expert reports in this case.

- A letter from Mr. Manfred dated December 14, 2010, describing "the methodology used by the Revenue Sharing Definitions Committee . . . to review Clubs' related-party transactions with regional sports networks," states that: "The process generally involves two steps. First, the Committee retains the Bortz Media & Sports Group to reconstruct a broadcast entity's income statement based on financial information provided by its related-party Club. . . . Second, the Committee considers the Bortz estimate . . . before recommending an adjustment or other corrective action. . . ." Orioles/MASN Brief at 19 (citing Letter of Mr. Manfred to Alan Rifkin (the "**2010 Letter**") (OMX 16) at 1).

The Nationals take a contrary view of the extrinsic evidence. *First*, the Nationals point to the statements of Peter Angelos to a Committee of the House of Representatives in 2006, in which he said:

> If at any time the Nationals would be dissatisfied with the fee structure, the rights fee structure, they have a right to complain to Major League Baseball and demand that a survey be made to guarantee that fair market value payments are being made for the rights fees for the rights to their games.

Statement of Peter Angelos at Hearing before the House Committee on Government Reform, 109th Congress, Second Session, Serial No. 109-152 (NX 16) at 42 (Apr. 7, 2006); *see* Nationals Final Brief at 19, ¶37.

Second, the Nationals dispute the import of certain of the extrinsic evidence offered by the Orioles/MASN, noting, among other things, that:

- The March 25, 2005 draft of the Agreement that deleted the reference to comparable teams and transactions also deleted a reference to the "actual operating results," which all parties acknowledge must be considered. *See* Nationals Final Brief at 18, ¶35; *see* 3/25/05 11:45 p.m. Draft (OMX 44) at 8.

- The communications between Messrs. Manfred and Rifkin in 2010 and 2011 demonstrate the lack of a strongly held belief on the part of Mr. Rifkin as to the nature of the "established

methodology"—else, there was no reason for him to be asking what "established methodology" meant. *See* Nationals Final Brief at 19, ¶38.

Third, the Nationals point out that whatever pre-agreement understanding may have been discussed between the Orioles and MLB in 2005, it was not written into the agreement so cannot have been clear to the Nationals' current owners, who purchased the team in 2006. *See* Nationals Final Brief at 4–5, ¶9.

The Committee concludes that much of the extrinsic evidence offered by the parties is itself largely ambiguous.

First, that MLB sent the 16th and 18th RSDC Reports to the Orioles showing what the RSDC was doing in 2005 can be equally interpreted as a description of (a) what the RSDC would always do or (b) what the RSDC was doing at the time across the industry. The Committee notes the absence of any promise that there would never be a change.[12]

Second, the 3/25/05 11:45 p.m. draft of the Agreement deleted not only the reference to "rights fees of comparable markets" but also to "the RSN's actual operating results." *See* OMX 44 at 8 (§ 2.I(ii)). If deletions are deemed to indicate what the parties did not intend, then it would be equally improper to apply either a comparable-teams analysis *or* the Bortz Methodology because the latter requires consideration of "actual operating results." Overall, these deletions seem to suggest that the Agreement was meant to allow the RSDC maximum freedom in the methodology it would use, rather than to prescribe a specific valuation approach.

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12 The Nationals correctly point out that the Nationals' current owners were not involved in the negotiations of the Agreement, but the Nationals' predecessor in interest was a party to the Agreement and therefore to its negotiations. The Nationals have not pointed to—nor is the Committee aware of—any law suggesting that extrinsic evidence of contractual intent is inadmissible to interpret an ambiguous contract due to a subsequent change in ownership of an entity or inapplicable to a successor-in-interest.

Third, while it is evident that the Agreement had a compensatory purpose, the Orioles/MASN have received substantial compensation, such that it is ambiguous, at best, as to whether that purpose should have any impact the setting of telecast rights fees or the interpretation of the phrase "established methodology." The Orioles have been compensated in several ways under the Agreement, including the following:

- The Orioles received a $150 million capital account at MASN without contributing any cash, while MLB (then the owner of the Nationals) contributed $75 million in return for a capital account of $75 million. *See* 3/28/05 Agreement (OMX 1) § 2.P.1; Tr. 538:10 (Haley).
- The Orioles received a franchise-value sales guarantee of $365 million, which was more than twice the price at which Mr. Angelos purchased the Orioles in 1993 ($173 million). *See* 3/28/05 Agreement (OMX 1) § 1.A–C; Tr. 536:21–537:11 (Haley).
- The Orioles received super-majority ownership in, and the permanent right to manage, MASN. 3/28/05 Agreement (OMX 1) §§ 2.O, 2.N.
- The Orioles received the right to telecast all of the Nationals' games in perpetuity through MASN. 3/28/05 Agreement (OMX 1) § 2.D.
- The Agreement guarantees the Orioles the same license fees as the Nationals. 3/28/05 Agreement (OMX 1) §§ 2.G, 2.J.3.
- From 2007 through 2011, the Orioles received at least approximately [redacted] in license fees and equity distributions from MASN, while the Nationals received [redacted][13]

The Orioles/MASN's argument that the Agreement had a compensatory purpose does not answer the question of how much the Orioles should be compensated or how, if at all, that

[13] The Orioles' games for 2005–2006 were shown on Comcast, *see* Sandomir article, *supra*, and the [redacted] total for the Orioles does not include the sums that the team received from Comcast for those years. License fees for the years 2007–2011 for the Orioles and 2005–2011 for the Nationals are set by § 2.G of the 3/28/05 Agreement (OMX 1). These equity distributions set forth above are based in part on NX 43. As noted above in note 5, the Orioles/MASN have not disputed the Nationals' calculations and have not offered competing ones.

purpose should influence a determination of license fees that are to be based on "fair market value."

In light of the uncertain source of the claim that the Orioles suffered at least $50 million per year in losses, *see* pages 19–20, *supra*; Orioles/MASN Final Brief at 6, the Committee cannot credit it. The Deloitte Report and the 8/20/04 Wyche Letter are each labeled "Draft." *See* Rifkin Witness Statement Ex. 2; OMX 39. By their terms, therefore, they are not final analyses, and they are not supported by expert testimony in this case. They instead constitute out of court statements that are hearsay to the extent that offered for the truth of what they assert—as proof of the harm actually suffered by the Orioles from the Nationals' relocation.

The Committee agrees with the Orioles/MASN that the value of the Orioles' super-majority ownership of MASN depends on MASN's profitability. *See* Orioles/MASN Final Brief at 1–2, 6–7; *see, e.g.*, OMX 34 (estimating income, loss, and cash flow for MASN using the Nationals' proposed license fees). The Committee also agrees that the level of telecast rights fees is a substantial factor in determining how profitable MASN can be. However, the Agreement has already provided the Orioles with substantial compensation, and the Agreement does not require that telecast fees be set at a level each year that guarantees MASN a profit, much less any particular amount or percentage of profit. It requires that they be set at "fair market value." Agreement (OMX 1) § 2.J.3.

The Committee appreciates that Orioles/MASN's proposed methodology, the Bortz Methodology, explicitly takes into account MASN's profitability. But, as will be shown in § II.G.1, the Bortz Methodology is sensitive to changes in inputs. There is too wide an inferential gap between saying that the 3/28/05 Agreement intended to provide the Orioles with

compensation and saying that the 3/28/05 Agreement requires that the Orioles be compensated in the form of a particular profit margin.

The remaining extrinsic evidence is also largely ambiguous:

- Mr. Angelos' testimony in Congress is ambiguous because all he says is that a "survey" could be made, but he never explains what would be surveyed or what the result of the survey would be. He does not develop the point. *See* NX 16.

- The projections that Allen & Co. furnished the Orioles before the 3/28/05 Agreement were not referenced or incorporated in the Agreement and projected numerous things incorrectly—for example total revenue for 2015 was projected to $171 million while final revenue was [redacted] and it assumed license fee payments in 2015 of $28 million dollars to each team. *See* Allen & Co. Projections (OMX 19); Wyche/Bortz Report at Appendix B (MASN's actual financials).

- The 2012 emails between Mr. Manfred and David Frederick, Esq. (Orioles/MASN's counsel at the 2012 Hearing), on which Mr. Rifkin was copied (OMX 30), are ambiguous:

  - Mr. Manfred does say that the "go[ing] forward" view articulated by the RSDC should not "[a]ffect[] a case applying an 'established methodology.'" OMX 30.

  - At the same time, Mr. Manfred was refusing to give the Orioles/MASN examples of recent Bortz Methodology reports on the ground that they were not relevant to the present dispute—which he said did not involve applying the Bortz Methodology. *Id.*

  - Mr. Manfred explained that of the two recent Bortz analyses, one was done because of a specific "contractual overlay" and the other was done "because in the time period at issue other clubs were evaluated by [B]ortz and we thought it was unfair to shift the analysis used for different clubs." *See id.* ("We did not want to use a different analysis for different clubs in the same time period."). This indicates that the Bortz Methodology was being applied to earlier revenue sharing years, but not to 2012 and later.

  - Mr. Frederick, in his reply, indicated his understanding that Mr. Manfred was communicating that the Bortz Methodology was no longer in use because he continues to argue that the Bortz Methodology must be applied to the RSDC's analysis, rather than simply agreeing with Mr. Manfred (which he would have done had he interpreted Mr. Manfred as saying that Bortz would be used in this telecast rights determination). *See id.* ("Thus, that Bortz approach must be applied in our case and the RSDC cannot cherry-pick a new methodology and make it applicable to MASN. Whether or not the RSDC has moved away from the Bortz-style margin analysis years after the execution of the Settlement Agreement is not relevant.").

- The Committee cannot draw a conclusion about what the term "established methodology" means from these terse and ambiguous statements made seven years after the 3/28/05 Agreement was signed.

The Committee finds persuasive the actions of the Orioles/MASN's counsel, Mr. Rifkin, who (1) in 2010 "request[ed] . . . information concerning the methodology used by the Revenue Sharing Definitions Committee . . . to review Clubs' related-party transactions with regional sports networks," 2010 Letter (OMX 16) at 1, and (2) again in 2011 "asked for information regarding the Revenue Sharing Definitions Committee's 'established methodology for evaluating all other related party telecast agreements in the industry.'" 2011 Letter (NX 55) at 1. On both occasions—in 2010 and again in 2011—Mr. Rifkin was told that the RSDC would employ a methodology different from Bortz. OMX 16 at 2; NX 55 at 1. On neither occasion did Mr. Rifkin object.[14] This may be due to the fact that the 16th and 18th Reports are not as straightforward as the Orioles/MASN currently maintain. Although the 16th Report has broad language about preferring the Bortz Methodology to analysis of comparable teams' agreements, the specific comparable agreement excluded from analysis was *one* other agreement whose structure was somewhat different from that of the agreement under scrutiny. *See* 16th Report (OMX 4) at 7–8. The 18th Report also used broad language to disclaim reliance on comparable teams and transactions, but it also did include in its analysis a check on the Bortz Methodology that took the form of a sample of teams specifically selected by the RSDC. *See* 18th Report (OMX 3) at 7–8.

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14 At the hearing, Mr. Rifkin testified that he wrote a letter objecting to Mr. Manfred's 2011 Letter. Tr. 596:25–597:18. That letter was never produced or offered into evidence by the Orioles/MASN, even though it would be favorable evidence within the Orioles/MASN's ability to produce—if it existed. The Committee therefore draws the adverse inference that no such letter exists and rejects this testimony as incredible. *Cf. Hricko v. State*, 759 A.2d 1107, 1134 (Md. Ct. Spec. App. 2000) ("Like the dog that did not bark in the night in Holmes's 'Silver Blaze,' the utter absence of evidence may proclaim guilt as loudly as any affirmative clue.").

The language of the 3/28/05 Agreement also supports the view that the "established methodology" could change. The term *established*—though indicating that there is some past time in which a methodology was established—does not necessarily refer to the past time before the parties signed the 3/28/05 Agreement. It can also refer to the time preceding the date a valuation is undertaken. For example, in § 2.J.3, "established' is also used in the sentence: "The fair market value of the rights **established** pursuant to this Subsection for the relevant five year period . . . shall be final and binding . . . ." Here the term *established* is used to mean something that is established for a particular five-year period, not perpetually.

Tellingly, § 2.J.3 requires that the "established methodology" be the methodology used "for evaluating all other related party telecast agreements in the industry." *See* 3/28/05 Agreement (OMX 1) § 2.J.3. The parties agree that the 3/28/05 Agreement is perpetual. *See* Tr. 602:4–17 (Neuwirth summation); *id.* 633:9–20 (Webster summation). If the 3/28/05 Agreement is interpreted to require using the Bortz Methodology long after the Bortz Methodology is no longer in use for "evaluating all other related party telecast agreements in the industry," it would require reading this requirement out of the Agreement—or require this Committee to insert the words "as of today" after the word "evaluating."

The law is clear that the term established can mean something that is *established* at a given time, rather than once and for all. One of the cases cited by the Orioles/MASN, *Dixon v. Board of Supervisors*, 222 A.2d 371, 373–74 (Md. 1966) (cited at Orioles/MASN Final Brief at 14 & n.50), held that an electoral boundary was "established" less than a year prior to the decision. In other words, the law is consistent with "established" meaning something that has been established *recently* and which may replace an earlier established form.

Thus, the Committee concludes the most reasonable interpretation of the phrase "established methodology," *see Calomiris*, 727 A.2d at 368, and the weight of the evidence in this case, both lead to the conclusion that "established methodology" in this perpetual contract refers to a methodology that the RSDC uses for all other telecast agreements at the time that license fees are determined under § 2.J.3. *Cf.* Ruling of the Administrator on the 34th Report (NX 3) at 1–2. Among other things, it would unreasonable to conclude on this record that the parties in 2005 intended to compel an RSDC sitting 20, 50 or 75 years in the future to use an unstated methodology that was in use in 2005 while at the same time explicitly requiring that RSDC to employ the established methodology it was "using ... for evaluating all other related party telecast agreements in the industry." Agreement (OMX 1) § 2.J.3.

The Committee concludes that the applicable methodology is the methodology set forth in the 2011 Letter. *First*, this methodology was supplied to the parties well in advance of the 2012 RSDC Hearing, and neither party objected contemporaneously. The first objection was not recorded until April of 2012, in connection with the 2012 RSDC Hearing. *See* OMX 30. *Second*, as the Nationals point out, the methodology described in the 2011 Letter is substantially the same as that set forth in the 34th Report. Nationals Final Brief at 1–2, ¶3. This is important because the Agreement's § 2.J.3 requires this Committee to apply the "established methodology" that is used "for evaluating all other related party telecast agreements in the industry." The 34th Report (NX 3), as modified by the Administrator's ruling, though released in late 2012 and then modified by the Administrator in early 2013, applies to all transactions including those beginning with the 2012 revenue-sharing year. *See* Ruling of the Administrator on the 34th Report (NX 3) at 1. Because the 34th Report and the 2011 Letter express the same methodology for all practical purposes, this Committee does not need to resolve whether to use the 34th Report in light of the

fact that neither the previous Committee nor the Parties had access to this Report at the time of the 2012 RSDC Hearing.

The 2011 Letter's approach, like the methodology set forth in the 34th Report, includes an analysis of comparable transactions. Nationals Final Brief at 1–2, ¶3. However, and most importantly for this Committee, both the 2011 Letter and the 34th Report also include a bottom-up analysis: The 2011 Letter, includes as a factor "a third-part[y] valuation expert to estimate a Club's appropriate rights fee by way of a bottom-up evaluation of the related-party entity's operating income." NX 55. This sounds very much like the Bortz Methodology. The 34th Report also includes a "review" of "the income statement of the RSN," and "make[s] assumptions regarding the expected operating margin of the RSN." NX 3 at 6. This too, more or less, describes the Bortz Methodology.[15] The primary difference between the two approaches is that the 34th Report uses an unspecified econometric model and considers the facts and circumstances of a given deal to determine whether it is a market-value deal. Neither of these two factors is central to the disagreement between the parties.[16]

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15 The Committee notes that, although the parties do not discuss this, two of the more recent RSDC reports in evidence apply a bottom-up analysis of an RSN's financials to determine if the license fees paid by that RSN are set at fair market value. *See* 39th Report (NX 47) at 12–14; 38th Report (NX 13) at 8–14.

16 The 34th Report's analysis of the history of the agreement at issue actually entails considering a proposed license fee in light of the negotiation of that license fee, to see if it is the result of arm's-length bargaining. *See* 34th Report (NX 3) at 7 ("The RSDC will consider facts relating to the Club's negotiation of its rights fee agreement that the RSDC or the Club believes are relevant to a determination of whether the rights fee is of fair market value."). The license fees that MASN paid to the Nationals for the years 2012 and thereafter are about the same as those that it proposes as fair market value to this Committee now. *Compare* Orioles/MASN Opening Brief at 6, ¶9 n.17 (MASN paid to Nationals amounts determined by Wyche in 2012 Wyche/Bortz Report); 2012 Wyche/Bortz Report at 1 (showing Orioles/MASN proposed license fees from 2012) *with* Wyche/Bortz Report at iv. This suggests that the license fees actually paid were not the result of an arm's length negotiation (which means only that this Committee should not presume that the Orioles/MASN's proposed license fees are market-based). The econometric

Thus, the Committee concludes that the phrase "established methodology for evaluating all other related party telecast agreements in the industry" in § 2.J.3 of the Agreement is the methodology that the RSDC used to evaluate other telecast agreements in 2012, at the time of the initial hearing in this dispute. Specifically, this methodology requires that the Committee consider both a bottom-up, Bortz-style analysis and look at comparable teams' transactions.

G. What Is the Fair Market Value of the Rights?

The Committee has therefore determined that the correct approach is to perform both a bottom-up, Bortz-style analysis and to perform a comparable-teams analysis. The Orioles/MASN apply the Bortz Methodology using certain assumptions that the Nationals criticize. The Orioles/MASN also contend that a comparison of similarly-situated teams' license fees supports their analysis. The Nationals, in turn, base their analysis on comparisons to a different sample of comparable teams. This Committee has considered the calculations of both parties, and for the reasons stated below, finds neither entirely persuasive. The parties' proposals, their critiques of each other's proposal, and the Committee's conclusion follow.

1. The Bottom-Up, Bortz Methodology

The Bortz Methodology's bottom-up approach is the preferred method of the Orioles/MASN. *See* Orioles/MASN Final Brief at 21–23. The Orioles/MASN's expert, Mark C. Wyche, applied it to the actual income statement of MASN for 2012–2016 using certain assumptions, and he obtained the following result:

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model referenced in the 34th Report has fallen into disuse. *See* 39th Report (NX 47) at 15 n.6. Unlike other factors listed in the 34th Report, the econometric model has not been uniformly applied to revenue sharing years 2012 and on. *Compare* 38th Report (NX 13) at 14 (applying econometric model to revenue sharing year 2012), *with* 39th Report (NX 47) at 15 n.6 (declining to apply econometric model to revenue sharing years 2012–2018).

Year	2012	2013	2014	2015	2016	Average
License Fee (millions)	$34.5	$39.3	$40.9	$43.0	$44.3	**$40.4**

See Wyche/Bortz Report at iv. This analysis is premised on the following assumptions:

- The margin between baseball revenue and baseball expenses (including license fees)—*i.e.*, the operating margin—should be 20%.
- 80% of affiliate revenues and 93.2% of direct advertising revenue should be considered baseball-related.
- About 88% of expenses should be considered baseball-related. (Note that Mr. Wyche broke down all expense categories and assigned them either 80% or 100% to baseball. The weighted average was about 88% for the period 2012–2016.)

Orioles/MASN Opening Brief at 29–31, ¶¶47–52; Tr. 450:16–453:13 (Wyche); Wyche/Bortz Report at 5–7 & Appendix A.

The Nationals criticize the Orioles/MASN's bottom-up analysis on two primary grounds. *First*, the Nationals contend that a margin of 20% should not be presumed. *See* Nationals Final Brief at 31–33, ¶¶64–67. The Nationals argue that nothing in the Agreement requires such a margin. *Id.* at 31, ¶64. The Nationals also contend that lower margins have been accepted by this Committee, *id.*, and by the industry when companies are in a start-up phase, which the Nationals liken to any point when an RSN's license fee agreement with a team is renewed. *See id.* at 31–32, ¶¶65–67. *Second*, the Nationals argue 100% of all revenues should be allocated to baseball programming because no RSN can actually bargain for higher affiliate fees or direct advertising revenues based on its shoulder programming. *See id.* at 33–34, ¶¶68–69. The Nationals' expert, Chris Bevilacqua, calculated that a bottom-up analysis that allocated all expenses and revenues to baseball, using operating margins of five percent and negative five percent produced license fees of $64.2 million and $73.4 million. *See* Bevilacqua Report at 44–45, ¶106 & n.100; NX 48.

The assumptions used in applying the Bortz Methodology are key. The Committee's analysis of Mr. Wyche's figures, for example, shows that if all revenues and expenses are allocated to baseball, and if a 0% operating margin is presumed, the result is an average license fee of approximately $69.4 million, which is about 70% higher than the Orioles/MASN average annual proposed license fee of $40.4 million, based on their application of the Bortz Methodology using different assumptions.

This makes it imperative for the Committee to explore the logic of the assumptions. The Committee finds that neither the 16th nor the 18th Report states that the Bortz Methodology requires either a specific allocation of revenues and expenses to baseball or a particular operating margin. Neither report even references any percentage allocation of revenues and expenses to baseball. The 16th Report mentions a 30% margin used by Bortz, while the Chicago Cubs tried to persuade the RSDC that the license fees proposed by Bortz were *too high* (suggesting that the implied margin sought by the Cubs was even higher than Bortz's 30% because that would have led to *lower* license fees than Bortz proposed). 16th Report (OMX 4) at 6. The 18th Report uses a 20% operating margin to explain why the RSDC declined to adopt the even lower license fees proposed by the Red Sox and the expert Houlihan Lokey (whose proposal assumed a 30% operating margin). *See* 18th Report (OMX 3) at 10–11 & n.6.

The Committee agrees with the Nationals that the 20% operating margin used in the 16th and 18th Reports is more in the nature of a maximum allowed margin than a minimum. *See* Reply Memorandum of the Washington Nationals ("**Nationals Reply Brief**") at 24–25, ¶46 (Sept. 21, 2018).

To support their assumptions, the Orioles/MASN rely on the testimony of their valuation expert, Mr. Wyche, who is also the creator of the Bortz Methodology. *See* Wyche/Bortz Report

at 5–7; Tr. 450:23–454:16 (Wyche). The Orioles/MASN also rely on the testimony of Leo Hindery, Jr., their industry expert, to corroborate the reasonableness of both the 20% operating margin and the 80% allocation of revenue to baseball programming. *See* Expert Witness Statement of Leo Hindery, Jr. ("**Hindery Report**") at 4–6, ¶¶7–14 (Aug. 10, 2018); Tr. 205:19–23, 258:2–9 (Hindery). The Nationals counter with their industry expert, Melinda Witmer, who testified that "[t]ypical 'back drop style' 'shoulder' programming (that is, non-live game programming) represents, at best, trivial value to affiliates of the RSN." Expert Witness Statement of Melinda Witmer ("**Witmer Statement**") at 6, ¶19 (Sept. 21, 2018); Tr., 407:25–412:13 (Witmer). She also testified that agreements between RSNs and Clubs in the market typically did not premise themselves on a particular margin for the RSN. Witmer Statement at 4, ¶14; Tr. 393:25– 395:24 (Witmer).

Weighing all of the evidence and taking into account the industry experience of the Committee members, the Committee concludes that it would be inappropriate to assign a significant portion of MASN's revenues and expenses to anything other than baseball. This is consistent with the testimony of the experts. 235:18–237:13 (Hindery); Tr. 316:16–317:7 (Bevilacqua); Tr. 410:23–412:13 (Witmer); *see also* Tr. 548:5–10 (Haley). Ms. Witmer opined that it is "worthless." Tr. 424:5–8 (Witmer).[17] Ms. Witmer did acknowledge that most RSNs still carry shoulder programming, even if it is a "vestige" of earlier times. *See* Tr.411:14–412:13 (Witmer). Nevertheless, the Committee cannot find any objective support for the relative value of MASN's shoulder programming in this record, which does not include any evidence showing precisely what shoulder programming MASN actually broadcast during 2012–2016. Therefore,

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17 MASN's shoulder programming is identified on its website. *Programming Schedule*, MASN, http://www.masnsports.com/shows-and-programming/ (last visited on Apr. 9, 2019).

based on the evidence and the industry experience of its members, the Committee concludes that it is appropriate to allocate 100% of affiliate fees revenues to baseball. On the other hand, the Committee credits the testimony of Orioles/MASN's expert Mr. Wyche that his allocations of Orioles/MASN's direct advertising revenues (93.2%) and expenses (approximately 88%) to baseball programming are based on MASN's financial documents. *See* Wyche/Bortz Report at 6–7; Tr. 451:14–452:18 (Wyche).

The question of the appropriate margin is closer. The Orioles/MASN's expert, Mr. Wyche, points out that using his proposed license fees would give MASN an EBITDA of about 33% on average, which is in line with industry norms. Wyche/Bortz Report at 13–14; Tr. 455:11–14 (Wyche); *see also* OMX 7 (SNL Kagan data on average operating margins of selected RSNs). The Nationals' respond that networks sometimes have to take on lower margins when they are in a start-up phase. *See* Nationals Final Brief at 31–32, ¶¶64–66. Every expert agreed that networks that are starting up or attempting to conclude a long-term deal with a team would often have lower margins in the immediate aftermath of signing a new deal with a team. *See* Tr. 244:16—248:19 (Hindery); *id.* 318:10–23, 319:16–20 (Bevilacqua); *id.* 396:12–22, 399:4–400:5, 433:5–12 (Witmer); *id.* 456:7–19 (Wyche). On the other hand, MASN has the guaranteed right to all of the Nationals' and Orioles' games, but it must renegotiate these rights every 5 years. *See* 3/28/05 Agreement (OMX 1) §§ 2.D, 2.I. The expert witnesses of both sides agreed that the margins of an RSN tend to be lowest immediately after a reset to a higher license fee and that the margins usually rise after the RSN subsequently resets to higher affiliate fees. *See* Tr. 377:2-14 (Bevilacqua) ("Q. Not only are they [RSNs] a great business, but even though there may have been this paradigm shift you claim, that didn't put a dent in the operating margins that they were earning, did it? A. No. . . . [A]ll the affiliate agreements are getting reset along the way."); Tr.

396:23–397:13 (Witmer) ("[W]here the rights come up for renewal and there's a reset and it's substantial and it drives the margin down. The process then becomes one of elevating the revenue and increasing the revenue in order to be able to . . . achieve better economics."); Tr. 494:2–495:16 (Wyche) ("Any given year that EBITDA margin can drop based on a reset for a major product.").

The Nationals' broader criticism of Mr. Wyche's proposed margins is that other networks appear to make more in affiliate fees, when normalized (per-subscriber, per-game). *See* Nationals Final Brief at 27–28, ¶¶55–56; NX 41. But selecting an appropriate sample of RSNs is tricky. RSNs that show more than 250 games per year, such as MASN tend to have normalized (per-subscriber, per-game) license fees in same neighborhood as MASN. *See* Rebuttal Expert Report of Mark C. Wyche ("**Wyche Reply Report**") at 9–10, ¶21 (Sept. 21, 2018). MASN is one of only two RSNs that show two baseball teams. The other is NBC Sports Chicago, whose normalized (per-subscriber, per-game) affiliate fees are [redacted] *See* NX 41. Further, the only other RSN in the Baltimore–Washington, D.C., area is NBC Sports Washington, whose normalized (per-subscriber, per-game) affiliate fees are [redacted] MASN's. *See id.* Nor do MASN's rates (affiliate fees per subscriber) stand out as particularly low. *See id.*; Wyche/Bortz Report at 4–5.

The Committee's charge is to calculate the "fair market value" of the teams' license fees in five-year increments. This is somewhat challenging for the 2012–2016 period at issue, given, among other things, that MASN's affiliate revenues for this period are significantly determined by a 12-year deal with Comcast, that was entered in 2006, Tr. 508:13–19 (Haley), and the

Committee's simultaneous recognition that the Agreement has a compensatory purpose.[18] Comcast represents a significant portion of MASN's affiliate revenues. *See* Tr. 553:18–554:2 (Haley) ("Comcast is responsible for the majority of the network's revenues—not the majority, but it's the single largest affiliate . . . ."); *see also* Tr. 526:24–527:3 (Haley). Based on the Committee members' experience in the industry, the Committee believes such a long-term deal has the practical effect of putting a ceiling on the license fees that MASN could afford, particularly if MASN were found to be entitled to a guaranteed operating margin along the lines that the Orioles/MASN contend. The Committee finds credible the expert testimony suggesting that MASN's ownership structure creates an unusual set of incentives in negotiation. *See* Tr. 321:23–322:4 (Bevilacqua). While it is true that, as the majority owner of MASN, the Orioles logically always prefer to receive higher revenues than lower, *see* Tr. 577:21–25 (Haley), the Orioles also must share that revenue with the Nationals—particularly in the form of license fees—which decreases the reward that the Orioles get for taking on the risk of a black-out of MASN. *See* Tr. 329:16–24 (Bevilacqua); Tr. 507:3–23 (Haley). For every $1 that a privately-owned or single-team owned RSN can hope to get in return for a risky fight with an affiliate that could end in a black-out, the Orioles only get between 50 cents (if that revenue is converted to license fees) and something for present purposes over 80 cents (if it is converted to MASN profits). *See* Wyche/Bortz Report at Appendix C (showing Nationals interest in MASN profits 2012–2016); NX 43 (same).

[18] The Committee observes that it would be difficult to reconcile the Agreement's compensatory purpose with the value of the license fees the Nationals propose. If awarded, that level of fees would have the effect of forcing MASN to operate at a roughly $50 million per year loss, 2012–2016. *See* Pre-Hearing Reply Submission of Mid-Atlantic Sports Network and the Baltimore Orioles at 1 (Sept. 21, 2018); OMX 34.

Moreover, as previously discussed, a reset with an affiliate is one way that an RSN is able to raise its margin, especially after it enters into a new deal with a team for higher license fees. *See* Tr. 377:2-14 (Bevilacqua); Tr. 396:23–397:13 (Witmer); Tr. 494:2–495:16 (Wyche). Yet here, MASN has forgone its ability to reset its affiliate fees with Comcast around 2012, even though it had to reset its license fees with the Nationals and the Orioles in 2012.

Weighing all of the evidence and arguments, and viewing them through the prism of the Committee members' substantial experience in the industry, this Committee believes that an RSN would normally be able to reset its affiliate fees after resetting its license fees, achieving higher margins as the years pass from its deal with a team for license fees. Therefore, taking into account this economic reality, the Committee finds that most appropriate operating margin to apply to MASN would be an increasing margin that starts at zero in 2012 and increases by 5% each year until it reaches 20% in 2016.[19] An increasing operating margin implies decreasing license fees (all other things assumed to be equal). Applying such an operating margin to

19 [redacted]

MASN's income statement yields license fees that fall in most years. *See* Wyche/Bortz Report at Appendix A.

Applying this operating margin and allocating 100% of all of MASN's affiliate revenues to baseball (while using the Orioles/MASN's assumptions for allocation of direct advertising revenue and expenses), the Committee finds that the result of the Bortz Methodology is:[20]

Year	**License Fee**
2012	$62,680,542.50
2013	$64,707,733.18
2014	$63,562,739.43
2015	$60,746,463.02
2016	$57,640,572.70
Average Annual Value	$61,867,610.16

2. The Comparable Teams Approach

The Nationals' expert focused on comparable metrics and produced a total of six. The Nationals used a sample of six teams to produce *four* of those metrics. *See* Bevilacqua Report at 33–36, ¶¶77–82. The Nationals also produced two more metrics, using different samples. *See id.* at 38–39, ¶¶89, 92.

The Nationals' primary analysis focused on the six teams that the Nationals considered comparable. These were the New York Yankees, the Los Angeles Dodgers and Angels, the Texas Rangers, the Houston Astros, and the Philadelphia Phillies. *See* Nationals Final Brief at 25, ¶50; Bevilacqua Report at 6–7, ¶18. The Nationals presented two rationales for selecting these teams: all had entered deals in or after 2010, and all occupied "top-10 media markets." Nationals Final Brief at 9, 25, ¶¶17, 50; Bevilacqua Report at 6–7, ¶18; *see also* Tr. 291:23–292:16 (Bevilacqua). Additionally, five of the six teams were in "two-Club markets." *See*

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20 The Committee uses MASN's operating results shown in Appendix A of the Wyche/Bortz Report.

Nationals Final Brief at 25, ¶50 n.134; Bevilacqua Report at 30, ¶70; Tr. 292:23–25 (Bevilacqua).

Most of the Nationals' expert analysis was focused on these six teams. The first analysis appear to have been presented principally for illustrative purposes. The Nationals offered an average of their sample teams' license fees, with a twist—backcasting: All of the agreements of their sample teams other than the Yankees started after 2012 (*i.e.*, in 2013, 2014, 2015 or 2016). The Nationals replaced the license fees actually paid by the team in the years prior to the year the new deal was effective with a new license fee based on the later-entered transaction, discounted back by 4% per year. *See* Bevilacqua Report at 32, ¶74; NX 33; *see also* Tr. 296:19–297:23 (Bevilacqua). Thus, for example, if a deal took effect in 2015, as it did for the Texas Rangers, the Nationals used the new contractual values for 2015–2016 and backcast for 2012, 2013 and 2014. *See* NX 33. This has a large impact on the license fees attributed to some teams. For example, the Dodger's actual Net Defined Local Revenue ("**NDLR**") income in 2012 was [redacted], but with backcasting it became [redacted] *See id.* This analysis produced an illustrative metric: an average license annual license fee of [redacted] Nationals Final Brief at 26, ¶53. Notably, without backcasting the same teams produced average license fees of [redacted] *See* NX 33.

The Nationals' *primary* analysis involved even more backcasting. The Nationals normalized each of their sample teams' license fees in 2016, applied those fees to the Baltimore–Washington, D.C., DMA in 2016, and then used an annual 4% discount to backcast the license fees for 2012–2015. Bevilacqua Report at 34–35, ¶¶79–80; NX 34. This produced an average annual license fee of $92.9 million. Pre-Hearing Submission of the Washington Nationals Baseball Club ("**Nationals Opening Brief**") at 42, ¶93 (Aug. 10, 2018); Bevilacqua Report at

35, ¶80; *see also* Tr. 298:5–20 (Bevilacqua). This normalization used the two teams' DMAs' data on households with pay-tv subscriptions in each DMA. *See* Bevilacqua Report at 14–15, 34–35, ¶¶33, 79–80.

The Nationals repeated this analysis by normalizing to each team's home television territory ("**HTT**") (rather than DMA, as previously) and produced an average annual license fee of $121.6 million. Bevilacqua Report at 35, ¶81 & n.80; NX 35.[21] The Nationals also used a third population statistic, RSN subscriber numbers, to normalize license fees, and got an average license fee of $106.9 million. Bevilacqua Report at 36, ¶82; NX 38.[22] Thus, the Nationals extracted four metrics from their six-team sample.

The Nationals also extracted a normalized license fee from the fees adjusted by the RSDC in its 38th Report for the Boston Red Sox and applied those normalized fees to the Baltimore–Washington, D.C., DMAs in 2016 (backcasting to 2012). Bevilacqua Report at 36–38, ¶¶85–89; Tr. 300:20–301:8 (Bevilacqua); NX 39. This produced an average annual license fee of $96.5 million. *See id.*

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[21] Regarding HTT, Mr. Bevilacqua commented that "the RSDC in its 38th Report indicated the entire metric [HTT] showed a lower correlation to local television rights fees than other metrics, such as the number of Pay-TV subscribers in the Club's Core DMA." Bevilacqua Report at 35, ¶81 n.80 (citing 38th Report (NX 13) at 5–6). However, Mr. Bevilacqua did not offer a rationale for the use of this demographic, except to say that he "believe[s] this figure represents a credible data point." *Id.* This is, therefore, nothing more than *ipse dixit* (*i.e.*, something asserted but not proved). *See Rochkind v. Stevenson*, 164 A.3d 254, 261 (Md. 2017) ("[N]othing . . . requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.") (quoting *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)); *Blue v. Univ. of Md. Med. Sys. Corp.*, No. 24C10-006438, 2011 Md. Cir. Ct. LEXIS 252, at *3–4 (Md. Cir. Ct. Balt. Cty. Oct. 12, 2011) ("[*I*]*pse dixit* opinions are inadmissible.").

[22] The method for doing this was slightly different. The Nationals normalized license fees for each year, took annual averages, and applied those to the MASN subscriber numbers for each of 2012–2016. *See* NX 38. The Committee has not been able to replicate these particular calculations based on the information that the Nationals provided, but notes that the Orioles/MASN did not expressly challenge them.

Last, the Nationals looked at four teams outside the top-10 markets—the San Diego Padres, the Cleveland Indians, the Seattle Mariners, and Arizona Diamondbacks. Bevilacqua Report at 38, ¶90; NX 40; Tr. 302:2–303:9 (Bevilacqua). All of these teams had signed deals after 2010. *Id.* The Nationals used these teams' data in an analysis analogous to their primary comparison of their six teams (*i.e.*, normalizing to 2016 and backcasting) to produce a result similar to their primary analysis, though a much larger number: $128.4 million. *Id.*

Ultimately, the Nationals proposed the following license fees, as supported by their above-described six metrics:

Year	**2012**	**2013**	**2014**	**2015**	**2016**	**Average**
License Fee (millions)	$87.7	$91.2	$94.9	$98.6	$102.6	**$95.0**

Nationals Opening Brief at 47, ¶103; *see also* Tr. 303:17–24, 322:7–13 (Bevilacqua).

The Orioles/MASN heavily critiqued Mr. Bevilacqua's analysis. Among other things, the Orioles/MASN argued that the Nationals' sample was not representative, and that any backcasting was inappropriate. MASN/Orioles Final Brief at 33. The Orioles/MASN proposed a sample of all teams with shared markets, without backcasting, coming to a normalized *median* license fee of $0.112 per game, per-subscriber. Wyche/Bortz Report at 9–10 & Appendix D. The Nationals asserted that the *average* of the sample proposed by the Orioles/MASN was, therefore, actually $0.121. *See* Reply Report of Chris Bevilacqua ("**Bevilacqua Reply Report**") at 26–27, ¶50 (Sept. 21, 2018). The Nationals' proposed that the average license fee of $95.0 million, normalized to per-subscriber, per-game is about $0.193.[23]

[23] Although the Nationals did not provide this metric, the Committee was able to calculate it by dividing the proposed $95 million by 150 games and the average number of households in the combined Washington, D.C., and Baltimore DMA. *See* NX 12.

The Orioles/MASN disagree with Mr. Bevilacqua's normalization method. They urge that the license fees of the Nationals should be normalized to the DMA of Washington, D.C., rather than that of the combined DMAs of Washington and Baltimore. The DMA of Washington, D.C., is about 2.2 million. NX 12. The DMA of Baltimore is about 1 million. *Id.* This brings to a head the parties' disagreements about the effect of § 2.K of the Agreement. Using the Orioles/MASN's methodology, their proposed license fee for the Nationals is normalized to \$0.119 using only the DMA of Washington, D.C., *see* Wyche/Bortz Report at 9–10, but normalized to only \$0.0823 using the combined DMA. *See* Bevilacqua Reply Report at 23–24, ¶44.

The parties agree that the Orioles and Nationals share a market, Bevilacqua Report at 30, ¶70; Tr. 462:4–18 (Wyche), even as they disagree on the import of § 2.K and whether it requires that the Nationals and Orioles be treated as having the same DMA. *See* Nationals Final Brief at 22–23, ¶45 (quoting 3/28/05 Agreement (OMX 1) § 2.K); Orioles/MASN Final Brief at 31–32.

The resolution of this dispute is important both in order to be able to normalize license fees and to select the correct sample of teams.

- There are currently eight teams in four markets that share the same DMA with another team: the New York Yankees and Mets, the Los Angeles Dodgers and Angels, the Chicago White Sox and Cubs, and the San Francisco Giants and Oakland Athletics.
- There are also four teams that are considered to share a market but not a DMA with each other: the Tampa Bay Rays and Miami Marlins, and the Houston Astros and Texas Rangers (in Dallas).[24]

The Orioles/MASN suggest that the correct sample of teams consists of those in shared markets, regardless of whether they share a DMA. *See* Wyche/Bortz Report at 9–10. The

[24] *See* NX 12.

Orioles/MASN point out that MLB's documents indicate that Washington, D.C., and Baltimore are separate DMAs,[25] and, as noted, their expert, Mr. Wyche, treats Washington, D.C. and Baltimore as separate DMAs. *See* Wyche/Bortz Report at 9.

However, the Committee has already determined that § 2.K is unambiguous and requires that, "[f]or all purposes of determining the amount of the appropriate rights fees . . . the entire Television Territory shall be analyzed and examined as if the Television Territory were a unified territory in all respects, that is, the same geographic territory, the same DMAs, the same number of households treated as a single television market." 3/28/05 Agreement (OMX 1) § 2.K.

The Committee therefore concludes that the Orioles and Nationals should be treated as having "the same DMAs and the same number of households," as § 2.K requires.[26] Further, a geographic comparison suggests that the Nationals and Orioles are much more akin to two teams in the same DMA than two teams that merely share a market. This Committee takes notice of the following distances, by road, between the stadiums of teams in the same DMA:

- New York: 9 miles between New York Yankees' and Mets' stadiums,
- Los Angeles: 31 miles between Los Angeles Dodgers' and Angels' stadiums,
- Chicago: 10 miles between Chicago Cubs' and White Sox' stadiums, and
- San Francisco: 15 miles between San Francisco Giants' and Oakland Athletics' stadiums.

By comparison, the teams identified as sharing markets but not DMAs are an order of magnitude further apart:

- Tampa Bay Rays and Miami Marlins are 265 miles apart.

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25 *See* NX 14; Tr. 360:11–363:10 (Bevilacqua) (admitting on cross-examination that NX 14, an MLB document created in 2017, assigned different DMAs to the Nationals and Orioles.

26 The Committee observes that the parties' submissions all treat teams in shared DMAs as having the same population statistics, while treating teams with different DMAs as having different population statistics. *See* NX 34; Wyche/Bortz Report at Appendix D.

- Houston Astros and Texas Rangers (in Dallas) are 259 miles apart

The Orioles/MASN argue that the reason for the 3/28/05 Agreement in the first place was to address the harm to the Orioles from the move of the Expos to "just 38 miles from Oriole Park at Camden Yards." Orioles/MASN Final Brief at 1. This distance of 38 miles puts the Orioles and Nationals much closer to the range between teams in the same DMA than to teams that merely share markets. Consequently, the Committee agrees with the Nationals and Mr. Bevilacqua that the Orioles and Nationals should be treated as having the same DMA—the sum of the DMAs of Baltimore and Washington, D.C.

The Committee agrees with the Orioles/MASN and Mr. Wyche that the Nationals' sample of teams is selective, in part due to the exclusive focus on transactions occurring in and after 2010. The Committee does not agree with Mr. Bevilacqua's opinion that deals negotiated before 2010 are irrelevant. Indeed, the obvious change in 2010 was the inclusion of equity in an RSN as part of the compensation for a team's telecast rights, but neither party quantified this. Tr. 293:25–294:21, 294:24–298:4 (Bevilacqua); 496:14–20 (Wyche)—and the Nationals already have an equity stake in MASN. *See* 3/28/05 Agreement (OMX 1) § 2.N. The Committee also notes that the 2010 Rangers deal that Mr. Bevilacqua considers to have been record-setting only went into effect in 2015. *See* Bevilacqua Report at 6–7, 30, ¶¶18, 69. Moreover, the Nationals' focus on 2010 led them to ignore other teams in unified markets that had markedly lower license fees—namely, the teams in Chicago and San Francisco, as well as the New York Mets. *Compare* NX 33, *with* Wyche/Bortz Report at Appendix D.

The Committee disagrees with the Mr. Bevilacqua's use of backcasting and cannot assess his methodology for amortizing the signing bonuses because the underlying data were not provided. As discussed above, with backcasting, the Nationals were able to use the relatively high license fees of their sample teams for 2016 and ignore significantly lower license fees

actually received earlier years. *See* NX 33. Mr. Bevilacqua also opined that the way that the signing bonuses are amortized in the NDLR data is incorrect, so he used the underlying data to redistribute the signing bonus payments over more years. *See* Bevilacqua Report at 32–33, ¶¶75–76; *see also* NX 33. This has a large effect on what license fees one can infer from this set of teams:

- Using the Nationals' sample of teams, and applying both backcasting and Bevilacqua's signing bonus amortization, yields an average annual license fee of $92.9 million. *See* Nationals Opening Brief at 42, ¶93; Bevilacqua Report at 35, ¶80; *see also* Tr. 298:5–20 (Bevilacqua).

- The Committee found that by simply removing Mr. Bevilacqua's signing bonus amortization—thus, reverting to the basic figures provided by the NDLR—even while keeping backcasting yielded average annual license fees of $88.9 million.

- Removing backcasting, but following Mr. Bevilacqua's amortization of signing bonuses, yielded a still lower average annual license fee of $70.6 million.

- Finally, removing backcasting and removing Mr. Bevilacqua's signing bonus normalization yielded an average annual license fee of $68.1 million.

The very large gap between $68.1 million and $92.9 million[27] highlights the importance of backcasting and signing-bonus normalization to the Nationals' analysis.[28] The Committee

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[27] The Committee notes that this disparity is consistent with that seen in Mr. Bevilacqua's calculations in NX 33, which show that the average of the Nationals' sample teams' license fees without backcasting, $71.8 million, and the average with backcasting, $93.1 million.

[28] To make the above calculations, the Committee used DMA figures from NX 12, and the data provided by the Nationals for their six-team sample in NX 33. This (except for Bevilacqua's signing bonus amortization) also matches the data provided by the Orioles/MASN. *Compare* NX12 (DMA data), *and* NX 33 (NDLR data), *with* Wyche/Bortz Report at Appendix D (DMA and NDLR data). The Committee calculated a normalized (per-game, per-subscriber) license fee for each of the sample teams and for each year. Then, the Committee applied each year's average normalized fee to the combined DMA of Washington, D.C., and Baltimore for 2012–2016 to reach the implied license fees for the Nationals or Orioles for 2012–2016. For backcasting, the Committee simply used the above approach to calculate the license fee for the Nationals or Orioles for 2016 only, and applied a 4% annual discount back to 2012. *Cf.* Bevilacqua Report at 35, ¶80; NX 34.

finds that the correct measure of a market in a given year is what the market actually paid in that year, not speculation as to what might have been paid in a given year, if transactions had been negotiated earlier.[29] Therefore, the Committee rejects the Nationals' use of backcasting.

The Committee cannot analyze or verify Mr. Bevilacqua's amortization of signing bonuses, or meaningfully compare it to that of the unmodified NDLR data, because the Nationals did not provide any supporting data to show this particular piece of Mr. Bevilacqua's calculations. Therefore, the Committee cannot accept Mr. Bevilacqua's signing-bonus amortization as valid, necessary or useful.

The Committee believes that the correct sample of teams for comparison to the Nationals and Orioles are the teams that share markets *and* DMAs—the New York Yankees and Mets, the Los Angeles Dodgers and Angels, the Chicago White Sox and Cubs, the San Francisco Giants, and the Oakland Athletics. For that reason, the Committee rejects Mr. Bevilacqua's comparable metrics from the Philadelphia Phillies, the Boston Red Sox, and the Nationals sample of four, smaller-market teams.

Relatedly, the Committee agrees with both parties that the best metric for the size of a team's market is its "core DMA." *See* Tr. 445:7–25 (Wyche) ("We normalize it on a subscription TV Household, per game basis with the DMA, the core DMA."); Bevilacqua Report

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[29] The Nationals point to the fact that the prior RSDC analyzed comparable teams' license fees using backcasting to 2012. *See* Nationals Final Brief at 25–26, ¶52; Tr. 294:22–296:2 (Bevilacqua). The Committee finds this unpersuasive. Among other things, the prior RSDC did not have the benefit of seeing the comparable teams' actual income as reported by MLB. *Compare* 2014 RSDC Decision (NX 74) at 16–18 ("[T]he Nationals failed to report verifiable terms for any of their cited comparables. . . . But because this dispute covers future years for which comparative Club data are confidential, MASN's Bortz analysis lumps its four comparables into a single number: the average of aggregated rights income per average aggregated game per average aggregated DMA household."), *with* Bevilacqua Report at 31, ¶72 (using teams' NDLR), *and* Wyche/Bortz Report at Appendix D (same).

at 14, ¶33 ("In my experience, of the factors identified in Category 1, the size (*e.g.*, the number of TV or Pay-TV households) of a Club's core inner market or 'Core DMA' (*i.e.*, the area in or near the city in which the Club is located) is the leading factor that drives the value of a Club's telecast rights."). The Committee also credits the views of Mr. Bevilacqua that NDLR is, over all, a better measure of a team's income than the self-reported Financial Information Questionnaire ("**FIQ**"). *See* Bevilacqua Report at 31, ¶72 n.69.[30]

Therefore, looking at the above-mentioned teams, averaging their annual normalized license fees (from NDLR data), applying those to a combined Baltimore–Washington, D.C., DMA, and excluding both backcasting and Mr. Bevilacqua's signing bonus amortization, the Committee finds this result:[31]

Year	**License Fee**
2012	$47,076,002.76
2013	$50,827,359.86
2014	$57,258,448.79
2015	$61,981,467.24
2016	$67,187,998.79
Average Annual Value	$56,866,255.49

3. Conclusion on Fair Market Value

Because the Committee's two numerical analyses yielded such similar results, the Committee finds that the most appropriate measure of fair market value is the average of the two—the license fees produced by its bottom-up analysis and its comparable teams analysis, which yield the following license fees:

30 The Orioles/MASN offered their comparable teams analysis in terms of both NDLR and FIQ, but did not state a preference for either. *See* Orioles/MASN Opening Brief at 46–47, ¶78; Wyche/Bortz Report at 9–10 & Appendix D; Tr. 463:2–15 (Wyche).

31 The Committee uses the NDLR data for the teams reported in the Wyche/Bortz Report at Appendix D and the DMA data reported in NX 12.

Year	License Fee
2012	$54,878,272.63
2013	$57,767,546.52
2014	$60,410,594.11
2015	$61,363,965.13
2016	$62,414,285.75
Average Annual Value	$59,366,932.83

Although the Committee does not believe that the "fair market value" of the license fees is to be determined in reference to anything other than "RSDC's established methodology for evaluating all other related party telecast agreements in the industry," 3/28/05 Agreement (OMX 1) § 2.J.3, the Committee appreciates that the Orioles/MASN feel strongly that the Agreement's compensatory purpose can be accomplished only if the Orioles/MASN's proposal for license fees is used. The Committee stresses, however, that the Orioles have received and continue to compensation, among other ways through the Oriole's super-majority profit interest under § 2.N of the 3/28/05 Agreement:

- MASN distributed $197.6 million to the Orioles in license fees 2012–2016. *See* 2012 Wyche/Bortz Report at 1.
- MASN also distributed about [redacted] to the Orioles in profit distributions. *See* NX 43.
- Thus, the Committee estimates that the Orioles have received [redacted] million for 2012–2016, in both license fees and profit distributions. This compares with the Nationals' [redacted] *See* 2012 Wyche/Bortz Report at 1; NX 43.
- If the above license fees had been paid instead, the Committee estimates that the Orioles would have received a total of [redacted] (in license fees and profit distributions) for 2012–2016, compared to the Nationals' [redacted] The Committee notes that, under this formulation, the ratio of the Orioles' total compensation to that of the Nationals is 1.18, with a difference of [redacted] Both the ratio and the difference are largely in line with the parties' contractually agreed-to compensation from 2007 through 2011, discussed *supra* at page 22, during which the ratio was 1.28, and the difference [redacted]

Thus, while the Orioles will receive less compensation with the above license fees, the Agreement's compensatory purpose, is still fulfilled, including through the Orioles' super-

majority equity interest, under § 2.N of the Agreement. And this is in addition to the Orioles' other compensation under the Agreement, including (as discussed at page 22, *supra*):

- A guaranteed purchase price for the team, § 2.A.
- A guarantee of the same rights fees as the Nationals, §§ 2.G, 2.J.3.
- A right to broadcast the Nationals' games in perpetuity, § 2.D.
- A $150 million capital account without any cash paid, § 2.P.1.
- Permanent control over MASN, § 2.O.

III. Conclusion

The Committee has considered the Parties' remaining contentions and finds them to be without merit.

The Committee concludes that the fair market value of MASN's rights to the telecast of each of the Orioles and Nationals is:

Year	License Fee
2012	$54,878,272.63
2013	$57,767,546.52
2014	$60,410,594.11
2015	$61,363,965.13
2016	$62,414,285.75
Average Annual Value	$59,366,932.83

Dated: April 15, 2019

Mark Attanasio

Kevin Mather

Mark Shapiro